IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24/11/2004

Coram

The Hon'ble Mr.Justice F.M.IBRAHIM KALIFULLA

Writ Petition No.22258 of 2004
and
W.P.M.P.No.26951 of 2004

K.Srinivasan ... Petitioner

-Vs-

1.The State of Tamil Nadu
represented by Secretary,
Education Department,
Chennai-9.

2.Bharathidasan Institute of
Management(School of Excellence
of Bharathidasan University),
represented by the Director,
BHEL Complex,
Trichy-14.

3.All India Council for
Technical Education,
Indiragandhi Sports Complex,
Indiraprasantha Estate,
New Delhi.

4.Regional Office,
All India Council for Technical
Education,
Bangalore.

5.Vasanth.P.,
I Year MBA, Bharathidasan
Institute of Management,
Trichy 14. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue writ or order in the nature of certiorarified mandamus or any other appropriate writ calling for the records dated Nil, No.Nil of the second Respondent relating to the list of candidates provisionally selected for MBA (2004-06) in the Second Respondent College, quash the same and direct the second respondent to admit the petitioner in the MBA Course.

!For petitioner : Mrs. Hema Sampath.

^For respondents : Mr. Sanjay Ramasamy,
Government Advocate for R1

Mr. Satish Parasaran -for R2

Mr. Vijay Narayanan,
Senior Counsel
for Mr.R.Parthiban - for R3 & R4

:O R D E R

The petitioner has come forward with this writ petition for issuance of certiorarified mandamus to call for the records of the second respondent relating to the list of candidates provisionally selected for MBA (2004-06) in the second respondent college, to quash the same and direct the second respondent to admit the petitioner in MBA Course for that year.

2. The challenge to the said selection is on the ground that the second respondent institution failed to follow the admission procedure as has been clearly set out by the Hon'ble Supreme Court in the Judgments reported in T.M.A.PAI FOUNDATION vs. - STATE OF KARNATAKA (20 02(8) SUPREME COURT CASES 481) and ISLAMIC ACADEMY OF EDUCATION AND ANOTHER vs. - STATE OF KARNATAKA (2003(6) Supreme Court Cases 697).

3. The petitioner, who has completed his B.Tech. Petro- Chemical Technology in the School of Engineering and Technology of Bharathidasan University in First Class applied for admission to the MBA Course in the second respondent Institution called school of excellence. The said institution is stated to have been ranked as A1 by Business India. It is also stated that the students, who pass out from the said institution, get a placement in the reputed companies in India and abroad, in campus interview. The petitioner, who belongs to most backward community, applied for the said Course. It is also not in dispute that while the admission procedure was initially announced by the second respondent institution prescribing a different procedure, subsequently, by its letter dated 5.2.2003, informed the candidates that admission to MBA programmes would be made only through one of the five All India Entrance Tests, namely, CAT, JMET, MAT, ATM and XAT. In other-words, subsequent to the directives of the third respondent, AICTE, it was ascertained that admission of students could be only on the basis of the All India Test stipulated by the third respondent. The second respondent, therefore, decided to admit the students on the basis of the All India Test conducted by ATMA (Association of Indian Management Schools) and by holding interview and group discussion based on the mark scored in the said test namely ATMA. The petitioner was asked to pay a sum of Rs.500/- towards cost of ATMA Bulletin. The ATMA test was held on 8.2.2004. Subsequently, based on the mark scored in the said test, all the candidates were individually sent call letters to attend the other tests, such as group discussion, personal interview, essay writing and academic verification. The petitioner was called upon to participate in the said second round of selection process to be held

on 28.4.2004 at 9.00 a.m. In the communication dated 22.3.2004, calling upon the petitioner to attend the said second round of selection process to be held on 28.4.2004, the petitioner was duly informed as to the scope of such selection process and the test which the petitioner may have to undergo in that process. The petitioner was also called upon to produce all the original testimonials at the time of his personal interview to be held on that date. As far as the test results of the ATMA was concerned, the same was said to have been fed into the Web-site and was made available to all candidates concerned. The petitioner attended the second round of the selection process and subjected himself to the said process on 28.4.2004. Thereafter, according to the petitioner, he was not found selected, while candidates who secured lesser marks in the All India Test, came to be selected and therefore, he was aggrieved by the manner of selection made by the second respondent institution, which persuaded him to come forward with the present writ petition.

4. The petitioner filed this writ petition on 26.7.2004 which came to be entertained on 2.8.2004 and after service of notice the writ petition was taken up for hearing.

5. The sum and substance of the grievance of the petitioner is that the second respondent had resorted to the admission to the MBA Course contrary to the prescription of admission made by the Hon'ble Supreme Court in the Judgments reported in T.M.A.PAI FOUNDATION vs. - STATE OF KARNATAKA (2002(8) SUPREME COURT CASES 481) and ISLAMIC ACADEMY OF EDUCATION AND ANOTHER vs. - STATE OF KARNATAKA (2003(6) Supreme Court Cases 697), based on which the third respondent also issued specific notices to all such institutions on 27.10.2003 and 28.10.200 3 specifying as to how the admission should be made to the said post-graduate Courses.

6. Further, Mrs. Hema Sampath, learned counsel appearing for the petitioner also submitted that apart from the said violation in the matter of admission procedure, the second respondent institution also showed some favour by admitting certain students sponsored by a public sector undertaking, namely, Bharath Heavy Electricals Limited and that its failure to publish the merit list of candidates, who applied to the second respondent institution and who appeared for ATMA test vitiated the whole selection. Learned counsel also contended that there are certain seats lying vacant for the MBA Course of 2004-06 and in the light of their practice of allowing students to make good the attendance by allowing them to go through the Course once over again in the next year, the petitioner can be accommodated in the Course without disturbing the selection made for the Course of 2004-06.

7. As against the above submissions, Mr. Satish Parasaran, learned counsel appearing for the second respondent would contend that hitherto the second respondent always used to select students for the MBA Course by making the short listed candidates in the All India Test or in the other written tests conducted by the second respondent institution to undergo a rigorous test of group discussion, personal interview, etc., as the Course required such an additional selection process in order to ensure that excellence is maintained to retain the reputation as well as the name and fame of the second

respondent institution.

8. Apart from the counter-affidavit filed earlier a rejoinder affidavit has now been filed on behalf of the second respondent institution explaining as to how the MBA Course is being conducted and the procedure followed right from the stage of selection upto the completion of the said Course. Learned counsel for the second respondent pointed out that the process of selection by calling upon the candidates to participate in the personal interview, group discussion, etc., was in vogue even in the previous years, which process was being followed based on the guidelines issued by the third respondent namely, AICTE and therefore, the public notices dated 27.10.2003 and 28.10.2003 issued by the third respondent directing the various institutions having MBA Course to go in for All India Test are to be understood as in addition to the second round of selection process consisting of group discussion, personal interview, etc. The learned counsel for the second respondent would therefore, contend that the same cannot be held to be in violation of the prescription made by the Hon'ble Supreme Court. According to the learned counsel, the petitioner having subjected himself to the said selection process held in April, 2004 and having failed to come in the merit list, cannot be heard to complain about his non-selection.

9. As far as the sponsorship made by the public sector undertaking, namely, BHEL, the learned counsel for the second respondent would refer to the averments made in paragraph 8 of the rejoinder-affidavit and contend that in the light of the enormous infrastructure facilities provided by the said institution, they were admitting 5 students for a batch of 60 students and that in any event such admission was purely based on merit. In regard to the four lapsed seats, the learned counsel contended that in the light of the nature of the Course offered by the second respondent institution and the rigor of the said Course, it would not be in the interest of the petitioner himself to be admitted him in the midstream, as that would jeopardize the Course curriculum offered to other candidates, who have already been admitted and would also upset the completion of the Course. This submission, the learned counsel made apart from the decisions of the Hon'ble Supreme Court which deprecate such midstream admission to such professional Courses.

10. Mr.Vijay Narayanan, learned Senior Counsel appearing for respondents 3 and 4 after taking me through the above two decisions of the Hon'ble Supreme Court submitted that the selection of candidates for professional Courses can only be based on their marks secured in the written test and there would be no scope for applying any other test other than the one prescribed by the Hon'ble Supreme Court in the above referred two judgments.

11. Having heard the learned counsel for the respective parties, I feel it appropriate to refer to the decision of the Hon'ble Supreme Court in the forefront in order to appreciate the contentions of the respective parties. In the Eleven Judges Constitution Bench Judgment of the Hon'ble Supreme Court, reported in T.M.A. PAI FOUNDATION - vs - STATE OF KARNATAKA (2002(8) SUPREME COURT CASES 481), the manner of selection to be made has been set out, in paragraph 68 which makes it specific that selection of the

candidates to the professional Course should be purely based on merits. In the earlier part of the said judgment, while discussing the scope of selection of candidates to the various Courses, the Hon'ble Supreme Court has held that merit is usually determined for admission to professional and higher education colleges by either the marks that the students obtained at the qualifying examination or school leaving certificate stage followed by interview or by a common entrance test conducted by the institution or in the case of professional colleges by Government agencies. Ultimately in paragraph 68, the Hon'ble Supreme Court has stated the legal position as under:-

" 68. It would be unfair to apply the same rules and regulations regulating admission to both aided and unaided professional institutions. It must be borne in mind that unaided professional institutions are entitled to autonomy in their administration while, at the same time, they do not forego or discard the principle of merit. It would, therefore, be permissible for the University or the Government, at the time of granting recognition, to require a private unaided institution to provide for merit-based while, at the same time, giving the management sufficient discretion in admitting students. This can be done through various methods. For instance, a certain percentage of the seats can be reserved for admission by the Management out of those students who have passed the common entrance test held by itself or by the State/University and have applied to the College concerned for admission, while the rest of the seats may be filled up on the basis of counselling by the State agency. This will incidentally take care of poorer and backward sections of the society. The prescription of percentage for this purpose has to be done by the Government according to the local needs and different percentages can be fixed for minority unaided and non-minority unaided and professional colleges. The same principles may be applied to other non-professional but unaided educational institutions, viz., graduation and post-graduation non- professional colleges or institutes."

12. Subsequently, in the Constitution Bench judgment reported in ISLAMIC ACADEMY OF EDUCATION - vs - STATE OF KARNATAKA (2003(6) SUPREME COURT CASES 697) in paragraph 16, the Supreme Court has crystalized the position as regards the selection to be made in the following words:-

" ..... We thus hold that the management could select students, of their quota, either on the basis of the common entrance test conducted by the State or on the basis of a common entrance to be conducted by an association of all colleges of a particular type in that State e.g. medical, engineering or technical etc. The common entrance test held by the association, must be for admission to all colleges of that type in the State. The option of choosing, between either of these tests, must be exercised before issuing of prospectus and after intimation to the concerned authorities and the Committee set up hereinafter. If any professional college chooses not to admit from the common entrance test conducted by the association then that college must necessarily admit from the common entrance test conducted by the State. After holding the common entrance test and declaration of results the merit list will immediately be placed on the notice-board of all colleges which have chosen to admit as per this test. A copy of the merit list will also be forthwith sent to the concerned authority and the Committee.

Selection of students must then be strictly on the basis of merit as per that merit list. ....." (underlining is mine)

From a reading of the above referred to highlighted portion of the Supreme Court judgment, it is crystal clear that selection of the candidates to such professional Courses can only be made based on common merit test held for all the professional institutions either such test be held by the consortium of the private institutions or by the State body. Therefore, the submissions of Mr.Vijay Narayanan, learned Senior Counsel for AICTE in stating that there can be no other process of admission after the Constitution Bench judgment of the Hon'ble Supreme Court is fully justified. I therefore, hold that apart from testing a candidate's merit in a common entrance test, there would be no scope for any institution to hold any other different test for admission of students to different professional Courses including the one with which we are now concerned, namely, Master of Business Administration. Any other view would run contrary to the dictum of the Hon'ble Supreme Court which cannot be permitted to be made.

13. The contention of the learned counsel appearing for the second respondent that the second process of selection of group discussion, personal interview, etc., was in vogue in the previous years and that such tests were also prescribed by the third respondent, namely, AICTE, will be of no avail to the second respondent institution in the light of the categoric pronouncement of the Hon'ble Supreme Court referred to above. Therefore, on that question, namely, as to the procedure adopted by the second respondent institution in regard to the admission of the students to the MBA Course for the years 2004-06 by calling upon the candidates to undergo the second process of selection of group discussion, personal interview, etc., can never be given a seal of approval by this Court.

14. When once I reach the above said conclusion, as a necessary concomitant, it is required to state as to whether the selection made by the second respondent institution should be set at naught at this stage, at the instance of the petitioner. I am of the view that in the light of the consequences that would follow by resorting to such a course which would seriously affect the interest of several other candidates, who got selected to the said Course for the years 2004-06, I feel it would be wholly inappropriate even to venture any such attempt at this stage. It will have to be stated that the selection came to be made between February, 2004 and went on till July, 2004. The Course is also stated to have commenced in the month of July, 2004, after all the candidates were admitted. It is stated that the second respondent institution follows trimester pattern of examinations and that each trimester runs for three months. The MBA Course is stated to have got six trimesters to be held after commencement of the Course in July, 2004. Since we are in the fag end of November, 2004, five months have lapsed and a batch of 120 students for the years 20 04-06 have been undertaking the Course all these months. Therefore, it would be wholly unjustified, if the selection so made of all those candidates is to be upset, at this stage, especially, in the absence of all those selected candidates being given any opportunity of hearing in this writ petition. Therefore, I am of the view that it will not be prudent for this Court to upset the said selection merely on the ground

that the second respondent institution adopted the second process of selection also, namely, group discussion, personal interview, etc., after short listing the candidates based on the common entrance test of All India level conducted by ATMA.

15. Then, we are only left with the question whether the petitioner can be accommodated in any of the four lapsed seats, which are available in the second respondent institution for the Course years 2004-0 6. On this aspect when I perused the rejoinder-affidavit filed on behalf of the second respondent, I find that here again in the light of the nature of the subject offered for the Course and the manner of conduct of the said Course, it would not be proper for this Court to force the second respondent to induct the petitioner at this stage which will not only affect the Course offered by the second respondent institution to the already admitted students, but will cause serious dislocation and inconvenience to the petitioner himself. The petitioner will have to virtually make up the two trimesters offered by the second respondent institution, while one trimester is said to have already come to an end, the other trimester would be over by the end of December, 2004. In all in the two trimesters, it is stated as many as 14 subjects are being dealt with and in the light of the nature of the speciality of the Course in the second respondent institution, it will have to be held that any attempt on the part of this Court to force the second respondent institution to admit the petitioner, would cause unnecessary hindrance and prejudice to the faculties in the institution, who will have to take some extra efforts for the sake of the petitioner, if the petitioner is to be imparted, the lectures and other Course materials. Therefore, the system of condoning the failed candidates in any of the trimester and allowing them to continue with the further trimester, while admitting to make up their failure in the earlier trimester cannot be applied to the petitioner. Such a rule can be applied only to those who have already joined and are undergoing the Course. What is applicable to a normally admitted candidates cannot be applied to such unforeseen admissions. Equally, the contention made on behalf of the petitioner that the petitioner can be admitted to the Course of 2004-2006, but allowed to join along with the candidates of the future year cannot also be accepted, since, that would create a confusion in the matter of holding of the Course which is being carried on by the second respondent institution with certain time schedule. Moreover that is a submission made in desperation which cannot be countenanced by a Court of Law. Therefore, I am not inclined to accept the contentions so made on behalf of the petitioner. Further, such midstream admission is always frowned upon by the Hon'ble Supreme Court.

16. Though, Mrs.Hema Sampath, learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court reported in Paramjeet Gambhir and another vs. - State of M.P. and others (2003(4) SUPREME COURT CASES 276), wherein the Hon'ble Supreme Court in the facts and circumstances of those candidates and in the interest of justice directed the State Government and the Institution to consider the candidature of the applicants in those cases for giving them admission in the post-graduate Course in the disciplines in which seats were lying vacant, by taking into consideration of those applicants rank and choice, in that judgment itself the Supreme Court made it clear that, that order cannot be used as a precedent either for

holding third counselling or for granting midstream admission. Therefore, the said decision cannot be applied as an invariable rule for resorting to such a midstream admission.

17. It will also be appropriate to refer to the judgment of the Hon'ble Supreme Court reported in Medical Council of India vs. - Madhu Singh (A.I.R.2002 Supreme Court 3230), wherein the Hon'ble Supreme Court made it clear that midstream admission can never be made. The Hon'ble Supreme Court has held in paragraph 24 as under:-

"(i) there is no scope for admitting students midstream as that would be against very spirit of statutes governing the medical education;

(ii) even if, seats are unfilled that cannot be a ground for making mid session admissions;

(iii) there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;

(iv) the MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;

(v) different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counseling and the like have to be completed within the specified time;

(vi) no variation of the schedule so far as admissions are concerned shall be allowed;

(vii) in case of any deviation by the concerned institution, action as prescribed shall be taken by the MCI."

That apart as stated earlier, the petitioner, whose main grievance is that the second respondent institution resorted to a second process of selection, namely, group discussion, personal interview, etc., beyond the selection made through common entrance test, subjected himself to the said second process of selection held in the month of April, 2004 without any demur and thereby acquiesced himself to the said second selection process. It will have to be stated that, had it been brought to the notice of this Court atleast at that point of time, it would have enabled this Court to have corrected the second respondent institution by directing it not to resort to any other method other than what has been specifically prescribed by the Hon'ble Supreme Court and thereby the interest of all other third parties could have been saved. Therefore, even by his own conduct, the petitioner has denied himself from getting the relief or any direction for admission for any of the lapsed seats at this stage.

18. As far as the contention that the second respondent institution resorted to favouritism, by admitting candidates sponsored by public sector undertaking, namely, BHEL, it will have to be held that such a selection would

again be contrary to the selection procedure prescribed by the Hon'ble Supreme Court. However, if those sponsored candidates happened to be admitted based on their merit as contended by the second respondent, there will be very little scope for interfering with the said selection. In any event that by itself would not enable the petitioner to gain a definite admission as prayed for in this writ petition.

19. Unfortunately, there is no specific case brought to the notice of this Court concerning the wrong selection made for any of the candidates said to have been sponsored by the BHEL. Therefore, I do not find it appropriate to delve into the said aspect in this writ petition. On consideration of the whole issue, while it will have to be held that the selection process adopted by second respondent institution in respect of the MBA Course for the years 2004-06 was not in consonance with the selection process prescribed by the Hon'ble Supreme Court, in the light of the various reasons stated above, I do not propose to interfere with the said selection in this writ petition, while making it clear that such a procedure can never be followed by the second respondent institution in the future years and on that score I do not find any scope to set aside the selection or direct for admission of the petitioner to the said Course for the period 2004-06.

20. The writ petition, therefore, fails and is dismissed. No costs. Consequently, the petition W.P.M.P.No.26951 of 2004 is closed.

Index: Yes.
Internet:Yes.

ts/rj.

To
1.The Secretary to Government,
Education Department
Secretariat,
Chennai-9.

2.All India Council for
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Indira Gandhi Sports Complex,
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